

LFC Requester:**Theresa Rogers**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date 01/08/16

Bill No: HB37

Sponsor: William "Bill" R. Rehm

Agency Code: 305

Short

Person Writing Jason Yamato and Greer Rose

Title: Three Strikes Law

Phone: 505.222.9036 **Email** jyamato@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

House Bill 37 generally adds to the enumerated charges of Section 31-18-23 (E) (2), NMSA 1978 that comprise the predicate offenses that could be used to enhance a sentence to mandatory life imprisonment under the statute. The specific charges added are: voluntary manslaughter, involuntary manslaughter, aggravated battery, shooting at a dwelling or occupied building resulting in great bodily harm, aggravated battery against a household member, abuse of a child resulting in great bodily harm, negligent child abuse resulting in death, intentional child abuse resulting in death, aggravated arson, aggravated battery upon a peace officer, homicide by vehicle or great bodily harm by vehicle, and injury to a pregnant woman by vehicle. The bill would further expand the definition of a violent felony conviction to include enumerated offenses committed by juveniles that were sentenced as serious youthful offenders pursuant to Section 31-18-15.3, NMSA 1978. Additionally, enumerated offenses committed by juveniles in another state for which the juvenile offender was sentenced as an adult would fall under the definition of a violent felony conviction under the bill.

The bill also adds to the statute establishing parole authority, Section 31-21-10, NMSA 1978. The specific addition is a new subsection D that provides for a possibility of parole for persons receiving a sentence of their natural life in prison pursuant to Section 31-18-23, NMSA 1978 if the following conditions are met: 1) the person must serve at least ten years of the lifetime sentence, and 2) the person is at least 60 years old. An individual granted parole under this new subsection D would be required to serve a period of parole for the entirety of the individual's natural life.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The inclusion of juvenile offenses for which the offender was sentenced as an adult creates the unlikely possibility that an individual may be convicted of three violent felonies as a juvenile. The Supreme Court in Miller v. Alabama held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." Miller v. Alabama, 132 S.Ct. 2455, 2469 (2012). This scenario is extremely unlikely as it would be expected that the juvenile remain in custody until after the age of majority, but possible nonetheless. Additionally, it is more likely a youthful offender is sentenced as an adult in other

jurisdictions. This situation could create an Eighth Amendment challenge under Miller.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 37 addresses the same concern as House Bill 56 in a similar way. Both bills propose adding offenses to the definition of a violent felony. House Bill 37 takes the step of further expanding the definition of a violent felony to juvenile offenses for which the offender was sentenced as an adult. House Bill 37 allows for potential early release from the life sentence if the offender has served at least ten years of the life sentence and is at least sixty years old.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The drafters may also wish to consider adding the following offenses to the definition of a violent felony conviction: robbery, Section 30-16-2, NMSA 1978, criminal sexual penetration as provided in Subsection G(2), criminal sexual contact, Section 30-9-12, NMSA 1978, criminal sexual contact of a minor, Section 30-9-13, NMSA 1978, assault with intent to commit a violent felony, Section 30-3-3, NMSA 1978, aggravated burglary, Section 30-16-4, assault with intent to commit violent felony upon a peace officer, Section 30-22-23, and aggravated stalking, Section 30-3A-3.1, NMSA 1978.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A